

FRANKFURT KURNIT KLEIN & SELZ, P.C.
Edward H. Rosenthal
Beth I. Goldman
488 Madison Avenue, 10th Floor
New York, New York 10022
Phone: (212) 980-0120
Fax: (212) 593-9175

Attorneys for Defendants Scholastic Corporation and Scholastic, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID YOUNG-WOLFF, THE ESTATE OF	:	
MICHAEL NEWMAN, LAURA DWIGHT, ED	:	
BOCK, AND LEIF SKOOGFORS;	:	Case No: 14 Civ. 5089 (LLS)
	:	
Plaintiffs,	:	<u>ANSWER TO PLAINTIFFS'</u>
	:	<u>COMPLAINT AND DEMAND</u>
v.	:	<u>FOR JURY TRIAL</u>
	:	
SCHOLASTIC CORPORATION,	:	
	:	
Defendant.	:	
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Defendant Scholastic Corporation ("Defendant") by its attorneys, Frankfurt Kurnit Klein & Selz, P.C., for its answer to the Complaint ("Complaint") filed by Plaintiffs David Young-Wolff, The Estate of Michael Newman, Laura Dwight, Ed Bock and Leif Skoogfors (together "Plaintiffs"), responds and alleges as follows:

JURISDICTION AND VENUE

1. In response to the allegations in Paragraph 1 of the Jurisdiction and Venue Section of the Complaint, Defendant admits that this purports to be an action for copyright infringement, but denies that it has infringed any of Plaintiffs' rights.
2. The allegations in Paragraph 2 of the Jurisdiction and Venue Section of the Complaint contain legal conclusions to which no response is required.

3. The allegations contained in Paragraph 3 of the Jurisdiction and Venue Section of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendant admits that it conducts business in the State of New York, but denies that it infringed any of Plaintiffs' rights.

FACTUAL ALLEGATIONS

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Factual Allegations section of the Complaint.

2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Factual Allegations section of the Complaint.

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Factual Allegations section of the Complaint.

4. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Factual Allegations section of the Complaint.

5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Factual Allegations section of the Complaint.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Factual Allegations section of the Complaint.

7. Defendant denies the allegations in Paragraph 7 of the Factual Allegations section of the Complaint, except avers that it is a Delaware corporation.

8. Defendant denies the allegations in Paragraph 8 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc. is a wholly owned subsidiary of defendant Scholastic Corporation.

9. Defendant denies the allegations in Paragraph 9 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc. is a publisher and distributor of children's

books and other media, and a leader in educational technology-based learning materials, technology and service, and supplemental educational materials, and is a wholly-owned subsidiary of defendant Scholastic Corporation.

10. Defendant denies the allegations in Paragraph 10 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc. is a publisher and distributor of children's books and other media, and a leader in educational technology-based learning materials, technology and service, and supplemental educational materials, and is a wholly-owned subsidiary of defendant Scholastic Corporation.

11. Defendant denies the allegations in Paragraph 11 of the Factual Allegations section of the Complaint, except avers that certain programs and publications published by Scholastic Inc. have included photographs credited to certain of the plaintiffs.

12. Defendant denies the allegations in Paragraph 12 of the Factual Allegations section of the Complaint, except avers that certain programs and publications published by Scholastic Inc. have included photographs credited to certain of the plaintiffs, and that Scholastic Inc. obtains some of the photographs included in its programs and publications from photographers and/or licensing agents.

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Factual Allegations section of the Complaint, except avers that certain programs and publications published by Scholastic Inc. have included photographs credited to certain of the plaintiffs, and that Scholastic Inc. obtains some of the photographs included in its programs and publications from photographers and/or licensing agents under specified terms and conditions.

14. Defendant denies the allegations in Paragraph 14 of the Factual Allegations section of the Complaint.

15. Defendant denies the allegations in Paragraph 15 of the Factual Allegations section of the Complaint.

Defendant's Read 180 Program

16. Defendant denies the allegations in Paragraph 16 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc. created and owns a comprehensive reading intervention program entitled *READ 180*.

17. Defendant denies the allegations in Paragraph 17 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc.'s *READ 180* Program includes the three stages described in such paragraph and includes various publications, instructional materials and associated products.

18. Defendant denies the allegations in Paragraph 18 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc.'s *READ 180* Program includes components referred to as rBooks and LBooks.

19. Defendant denies the allegations in Paragraph 19 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc.'s *READ 180* Program includes rBooks that contain reading and writing instructional materials.

20. Defendant denies the allegations in Paragraph 20 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc.'s *READ 180* Program includes LBooks containing materials on language and literature.

21. Defendant denies the allegations in Paragraph 21 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc.'s *READ 180* Program has been published in several separate editions or iterations.

22. Defendant denies the allegations contained in Paragraph 22 of the Factual Allegations section of the Complaint except avers that Scholastic Inc.'s *Read 180 Next Generation* Program was launched in 2011.

23. Defendant denies the allegations in Paragraph 23 of the Factual Allegations section of the Complaint, except avers that the *Next Generation* iteration of Scholastic Inc.'s *READ 180* Program includes eBooks, paperbacks, implementation guides, teacher's editions, and other publications and associated materials.

24. Defendant denies the allegations in Paragraph 24 of the Factual Allegations section of the Complaint.

Defendant's Infringing Use of Plaintiffs' Photographs

25. Defendant denies the allegations in Paragraph 25 of the Factual Allegations section of the Complaint

26. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Factual Allegations section of the Complaint, except avers that Scholastic Inc. obtained some of the photographs included in its *READ 180* Program from photographers and/or licensing agents under specified terms and conditions.

27. Defendant denies the allegations in Paragraph 27 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

28. Defendant denies the allegations in Paragraph 28 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

29. Defendant denies the allegations in Paragraph 29 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

30. Defendant denies the allegations in Paragraph 30 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

31. Defendant denies the allegations in Paragraph 31 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

32. Defendant denies the allegations in Paragraph 32 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

33. Defendant denies the allegations in Paragraph 33 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

34. Defendant denies the allegations in Paragraph 34 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

35. Defendant denies the allegations in Paragraph 35 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

36. Defendant denies the allegations in Paragraph 36 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

37. Defendant denies the allegations in Paragraph 37 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

38. Defendant denies the allegations in Paragraph 38 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

39. Defendant denies the allegations in Paragraph 39 of the Factual Allegations section of the Complaint and avers that Scholastic Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

40. Paragraph 40 of the Factual Allegations section of the Complaint has been stricken. Accordingly, no responsive pleading is required.

41. Paragraph 41 of the Factual Allegations section of the Complaint has been stricken. Accordingly, no responsive pleading is required.

42. Paragraph 42 of the Factual Allegations section of the Complaint has been stricken. Accordingly, no responsive pleading is required.

43. Paragraph 43 of the Factual Allegations section of the Complaint has been stricken. Accordingly, no responsive pleading is required.

44. Paragraph 44 of the Factual Allegations section of the Complaint has been stricken. Accordingly, no responsive pleading is required.

45. Paragraph 45 of the Factual Allegations section of the Complaint has been stricken. Accordingly, no responsive pleading is required.

46. Paragraph 46 of the Factual Allegations section of the Complaint has been stricken. Accordingly, no responsive pleading is required.

COUNT 1

(COPYRIGHT INFRINGEMENT)

47. Defendant repeats and realleges its responses to the allegations set forth in Paragraphs 1 through 46 of the Factual Allegations section of the Complaint as if fully set forth herein.

48. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of the Factual Allegations section of the Complaint.

49. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Factual Allegations section of the Complaint.

50. Defendant denies the allegations in Paragraph 50 of the Factual Allegations section of the Complaint.

51. Defendant denies the allegations in Paragraph 51 of the Factual Allegations section of the Complaint.

52. Defendant denies the allegations in Paragraph 52 of the Factual Allegations section of the Complaint.

53. Defendant denies the allegations in Paragraph 53 of the Factual Allegations section of the Complaint.

54. Defendant denies the allegations in Paragraph 54 of the Factual Allegations section of the Complaint.

55. Defendant denies the allegations in Paragraph 55 of the Factual Allegations section of the Complaint.

56. Defendant denies the allegations in Paragraph 56 of the Factual Allegations section of the Complaint.

57. Defendant denies the allegations in Paragraph 57 of the Factual Allegations section of the Complaint.

58. Defendant denies the allegations in Paragraph 58 of the Factual Allegations section of the Complaint.

59. Defendant denies the allegations in Paragraph 59 of the Factual Allegations section of the Complaint.

60. Defendant denies the allegations in Paragraph 60 of the Factual Allegations section of the Complaint.

61. Defendant denies the allegations in Paragraph 61 of the Factual Allegations section of the Complaint.

62. Defendant denies the allegations in Paragraph 62 of the Factual Allegations section of the Complaint.

63. Defendant denies the allegations in Paragraph 63 of the Factual Allegations section of the Complaint.

64. Defendant denies the allegations in Paragraph 64 of the Factual Allegations section of the Complaint.

65. Defendant denies the allegations in Paragraph 65 of the Factual Allegations section of the Complaint.

66. Defendant denies the allegations in Paragraph 66 of the Factual Allegations section of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim upon which relief may be granted as to some or all of its claims.

SECOND AFFIRMATIVE DEFENSE

Scholastic Inc. had a license to use the images and/or used the images with permission from Plaintiffs' agents, which had apparent authority to grant such permission.

THIRD AFFIRMATIVE DEFENSE

To the extent that Plaintiffs' claims relate to Scholastic Inc.'s reuse of a photograph in a later edition, revised version, or an electronic version of a work for which Scholastic Inc. had previously licensed a photograph, such re-use is non-infringing pursuant to the revision privilege contained in Section 201(c) of the Copyright Act.

FOURTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' purported claims are for breaches of covenants rather than conditions in applicable licensing agreements and, as a result, do not constitute claims for copyright infringement.

FIFTH AFFIRMATIVE DEFENSE

To the extent that Scholastic Inc.'s use, if any, of the works at issue exceeded rights granted by any particular Plaintiff, such use was made with an innocent intent and without any belief that any acts of Scholastic Inc. constituted an infringement of copyright.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, including without limitation its claim to statutory damages and/or attorneys' fees, are barred in whole or in part because Plaintiffs failed to register copyright in

some or all of the works at issue before the alleged commencement of the infringement or within 3 months after the first publication of the work pursuant to 17 U.S.C. § 412.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the applicable three year statute of limitations for a claim of copyright infringement. 17 U.S.C. § 507(b).

EIGHTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs have suffered any damages, Plaintiffs have failed to take any steps to mitigate its damages.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs have known or should have known about the use of some of the images since at least the early 2000s and has acquiesced to such use, thus their claims are barred in whole or in part by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs have known or should have known about the use of some of their images since at least the early 2000s and have acquiesced to such use, thus their claims are barred, in whole or in part, by the doctrines of waiver, acquiescence, and estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

Some or all of the Plaintiffs lack standing to assert the claims of copyright infringement in the Complaint.

JURY DEMAND

Defendant demands a trial by jury of all issues so triable.

WHEREFORE, Defendant demands a judgment dismissing Plaintiffs' Complaint, along with an award of costs, disbursements and reasonable attorneys' fees, in addition to such other relief as this Court deems just and proper.

Dated: New York, New York
December 31, 2014

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Edward H. Rosenthal
Edward H. Rosenthal
Beth I. Goldman
488 Madison Avenue, 10th Floor
New York, New York 10022
Tel. (212) 980-0120
Fax: (212) 593-9175
erosenthal@fkks.com
bgoldman@fkks.com

Attorneys for Defendant Scholastic Corporation

TO: Kevin McCulloch, Esq.
Danial A. Nelson, Esq.
Nelson & McCulloch LLP
155 East 56th Street
New York, New York 10022
Main: (212) 655-3050
Fax: (646) 308-1178